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Ontario Transportation Royal Commission on
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MEMORANDUM

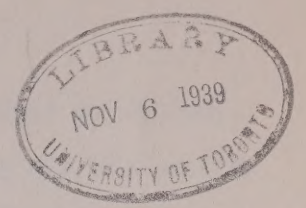
on

PART V

"Agreed Charges"

Bill 31

Transport Act, 1938



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not to Professor Johnson

Respectfully
Submitted to
The Honourable The Members of the Senate
of Canada
on behalf of
Automotive Transport Association
of Ontario.

a. J. c.

TRANSPORT BILL (No. 31 of 1938)

Part V (Agreed Charges)

Part V of the Transport Bill is designed to permit the Railways to make individual bargains with chosen shippers to carry all or a portion of their traffic. The intention is to enable the railways to acquire tonnage which is now being carried by ships and motor highway transport.

English Practice

The way the legislation will operate can be seen from the practice under the English Act.

In the Minutes of the Standing Committee of the House of Commons of Canada on Railways, Canals and Telegraph Lines of May 12, 1938, there will be found at Page 172 a transcript of the proceedings in a case under the English Act. The following is an extract from the evidence of the sole witness:

Q. What is the object of making this agreement with the trader? A. There is a large proportion of his traffic on the road; and it is with the object of securing it to rail, and of guaranteeing it to rail that the agreed charge was made.

Q. Did you make any tests? A. Yes. We took a test of two months, December, 1935, and January, 1936.

Q. What was the average charge per ton for the rail portion of the traffic? A. 150 s. 4.5/8 d. per ton.

Q. And for the road? A. 50 s. 1.15d.

Q. What was the percentage of the road traffic? A. 88 per cent of the whole.

Q. What was the combined average charge per ton? A. 69s. 3.23d.

Q. On that did the companies agree with the trader before the Court? A. Yes.

Q. That is, 69s. 3d. per ton? A. Yes.

The Railways Rates Tribunal thereupon approved the agreed charge at 69s. 3d. per ton (minimum charge per consignment as for 28 lbs.) for the period of one year.

Practice in Canada

It can be assumed that a similar method of arriving at agreed charges will be followed in Canada, subject to the fact that lengths of rail and road haul in Great Britain are noticeably shorter than in Canada

and that railways there are privately owned.

It is obvious that the price in Canada which will induce a shipper to give up his present road connections must be no higher than the average of his rail and road costs. If the bargain is no worse than this, it will result in a reduction in the per ton revenue of the Canadian National Railways. But the shipper is likely to hold out for some substantial inducement before he agrees to the solicited charge.

The bigger the shipper, the greater may be the deficit of the Canadian National Railways from agreed charges.

The legislation also appears to involve a most substantial outlay for the purchase of highway equipment, warehousing and garage facilities and other accessories. There is no shortage of road transport at the present time. Under agreed charges both railways may be compelled to add substantially to the number of trucks of large and small capacity on the roads.

OBJECTIONS TO PART V

It is submitted that Part V. of Bill 31 is not in the public interest, for the following reasons:

1. Injury to Shippers

The Bill is designed to relieve the railways from the "rule of law" to which they have been subject since 1903. As of that date they were forbidden to make private arrangements with individuals. They were required to publish tariffs equally available to all shippers.

This Bill introduces private bargaining between railways and shippers. Private bargaining caused immense confusion and hardship in business in the United States and Canada in the last century. It lead to the destruction of many small businesses through preferences and advantages obtained by their larger competitors.

It is idle to say that an Agreed Charge between the carrier and shipper under the proposed legislation will be available to all others; for no two businesses are precisely alike as to goods or length of haul.

The Agreed Charge is a uniform charge of so much per ton for all the business of the shipper whatever its destination in Canada. Section 35(3).

It is obvious that the charge per ton which may be agreed on for the traffic of shipper A can not possibly be the same as the charge per ton for his competitor B, whose markets may differ in whole or in part.

If the Act were to define the method of calculation to be used in arriving at an agreed charge, there might be some possibility of equality of treatment between large shippers; for they could afford to keep track of charges which had been approved. Small shippers and the one or two-man business could not afford the expense. They would not know what was going on.

It does not follow that even the larger businesses could obtain equality of treatment; for the rate which may have been agreed on will have been based on the detail of past shipments, the particulars and accuracy of which were known only to the railway and the shipper at the time the agreement was being negotiated. An innocent error in the quantity or description of the commodities or in the length of haul might have given the shipper a very decided advantage over his competitors.

Such checks as are now furnished by the platform personnel of the railways in the handling and weighing of the goods are removed for the future, so far as the shipper with an agreed charge is concerned.

The business of the shipper who has an agreed charge may change materially in the ordinary way; or by amalgamation, control or otherwise; so that the Agreed Charge may come to represent an unreasonably low rate for the services of the carrier. Obviously Shipper B has no means of knowing as of what period of time the traffic of Shipper A comes to being carried at a substantially preferential rate under an agreed charge.

No more friendless legislation was ever put forward with the suggestion that it would benefit business in Canada; for the Bill is opposed by the Canadian Manufacturers' Association, Boards of Trade, Chambers of Commerce, the Industrial Traffic League and other representatives of the shippers.

It is obvious that Part V will cause immense confusion and uncertainty in business. It is almost certain to result in preferences being obtained by big business over small business.

It may create an unhealthy species of vested interest in special bargains between the railways and business.

2. Injury to Motor Highway Transport

The Bill is admittedly aimed at the trucks.

There are four media of transport in Canada, namely, rail, road, water and air. Each performs an essential function in servicing trade and commerce. Each has certain advantages; each can operate more economically in a particular field than the others.

It is submitted that the proper policy for the future is to develop the co-operative rather than the competitive sides of these different media. Part V seeks to develop the competition aspect without regard to economic consequences.

The natural field of the rails is trainload business over long distances. This is the business in which they make their profits. A trainload of grain may bring in \$15,000 gross revenue to the railways.

Less than carload (l.c.l.) business has long been recognized as unprofitable business for the railways. The average loading of l.c.l. freight in Canada is less than four tons per car. The gross revenue may be \$40.00. The car may weigh 20 tons. The result is that the engine of the way freight is pulling five tons of car for one ton of freight.

The experience of the Class I railroads in the United States is that the l.c.l. business represents about $3\frac{1}{2}\%$ of the gross tonnage of the railways. To handle this requires 26% of the freight equipment of the railways. 32% of the damage claims are paid on l.c.l. freight.

The natural field for the trucks is the medium-haul less-than-carload field. In this field their costs of operation are definitely lower than those of the railways. The benefit of these lower costs has been passed on to the public. The result is that the railways have lost a part of their unprofitable business to the trucks. Part V is designed to enable the rails to recover this unprofitable business at still lower figures.

The importance of the trucking industry in Canada is recognized in the Report of the Royal Commission on Railways and Transportation in Canada, 1932, (Duff Report) as appears from the following extracts:

Page 55 Para. 160 In fairness to the road vehicle it should be stated that this diversion of traffic from the railways to the highways is in many cases due to the fact that conveyance by road is intrinsically a more suitable form of transport, either because the convenience afforded by the road vehicle outweighs other considerations, or because it is definitely cheaper . . .

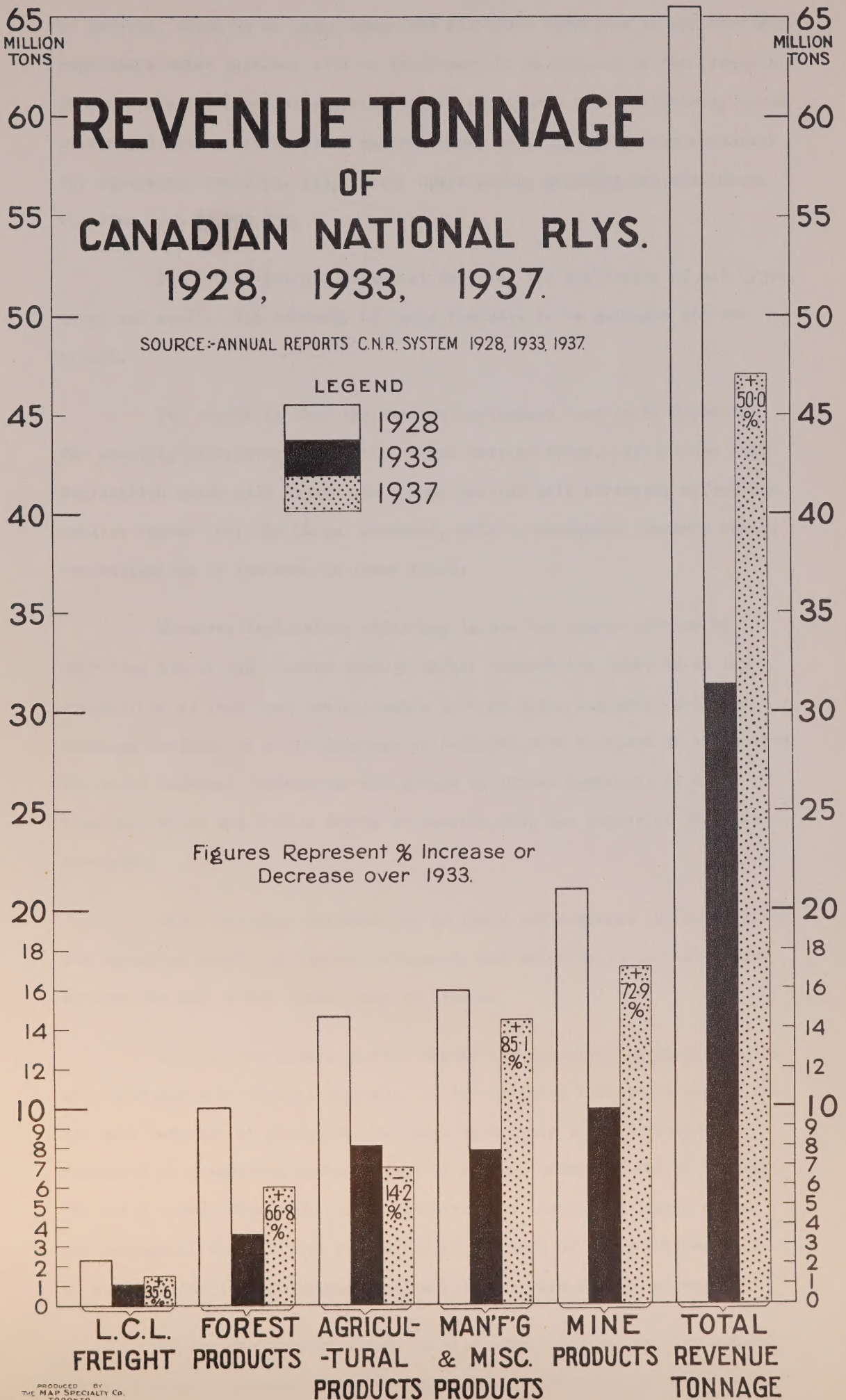
Para. 165 It is essential that the country should have the free and unhampered use of the cheapest forms of transport and therefore no restrictions which would unfairly prejudice the road user should be imposed . . .

Page 107 Para. 74 The following observations made by Mr. Loree, a member
108 of this commission, on the operation of highway carriers in the United States of America call for consideration in any plan or plans which may be devised for solution of the problem in Canada:-

Para. 75 "There has been some absorption of freight traffic by motor trucks. For the most part it has been the taking over of less than carload or package freight. The cost of this movement to the railroads has been very heavy. It makes necessary the provision of expensive freight stations on property well located in the hearts of the cities; it must be trucked twice across the station platforms, weighed and billed in small lots, stevedored in the cars at one terminal and unloaded in the other; while the loss and damage have been relatively very high. Whether or not it is a source of profit is debated, but the activity of the movement is likely to be confined with a distance represented by the ability of the truck to make delivery and return in one working day."

The attached chart (Exhibit A) entitled Revenue Tonnage of Canadian National Railways 1928, 1933, 1937 shows how small is the l.c.l. freight business of the Canadian National Railways; and how insignificant the loss in l.c.l. tonnage from the peak year of 1928. The chart indicates that from a freight point of view the present plight of the Railway is due to the lack of agricultural tonnage rather than to l.c.l. freight lost to the trucks.

EXHIBIT A



The trucking business in Canada has become a most substantial business as can be seen from the fact that Automotive Transport Association of Ontario, which by no means comprises all truck operators in the Province, represents motor carriers with an investment of \$8,000,000 in the Province. They operate 3,000 vehicles giving direct employment to approximately 5,000 persons, drivers, bookkeepers, warehousemen, etc. In 1937 their purchases for equipment, gasoline, oil, tires, spare parts, printing and stationery totalled some \$4,800,000.

The trucks perform essential services for businesses of all types, large and small. The tendency of large business is to purchase its own trucks.

The result is that the smaller businesses come to be dependent for equality of opportunity on the common carrier truck. It follows that legislation which will injure the common carrier will adversely affect the smaller rather than the larger merchant, with a consequent tendency toward centralization of business in fewer hands.

Moreover legislation which may injure the common carrier by depriving him of his tonnage through unfair competition (that is to say competition at less than the railway's cost of doing business) will put Canadian business at a disadvantage as compared with business of the United States of America. Canada can not afford to impose handicaps on road transport which the United States of America does not impose on its road transport.

There are many transactions in trade and commerce in Canada which are dependent wholly on highway transport; and which would not take place without the aid of the common carrier trucks.

Many of the common carrier trucks are operating on small margins of profit and with limited capital. It is submitted that it is not in the national interest to permit the railways with their immense financial resources to invade the natural field of highway transport and to destroy the small common carrier for the sake merely of increasing l.c.l. or car lot tonnage of the railways regardless of the cost of doing business. To do so is to involve established business in the ruin of the railways.

As the legislation stands it will permit the railways to destroy chosen transport operators by offering special inducements to their larger

customers to ship by rail. It is submitted that it is not in the public interest to pass enabling legislation which will make it possible for a government-owned enterprise directly or indirectly to destroy the established business of any taxpayer or of any class of taxpayers.

3. Injury to the Canadian National Railways

The legislation was put forward in the Senate in 1937 on the two-fold theory that (a) the plight of the railways was due to the trucks; and (b) the legislation would be the means of restoring \$38,000,000 of profitable business to the railways. Both assumptions are unsound.

(a) The plight of the railways is due to the lack of agricultural tonnage (Exhibit A) and to lack of Canadian exports. This appears from the attached chart headed 'Graphs 1919 to 1937' (Exhibit B). The pattern of the line marked 'Exports from Canada' is paralleled in striking fashion by those marked 'Total Freight All Railways' and 'Employment All Railways'.

It is also followed very largely by the line 'Net Operating Revenue Canadian National Railways' with one exception, namely, that the upturn from the low of 1932 is not as vigorous as the upturn in exports or the upturn in total freight carried by all railways. The reason for the weak upturn in net operating revenue is that the railways persist in carrying certain tonnage at a loss for the costly luxury of competing in the summer with waterborne transport and throughout the year with motor highway transport.

If the Canadian National Railways should abandon this and non-profitable traffic, its net operating revenue would show a material increase. It would then probably approach within measurable distance the line marked 'Interest C.N.R.'.

The bottom line of the chart shows the small amount of l.c.l. freight carried by all railways of Canada from 1919 to 1937.

1. ANNUAL EXPORTS IN MILLIONS OF DOLLARS	
2. FREIGHT CARRIED ALL STEAM RAILWAYS IN CANADA	
(a) TOTAL FREIGHT IN MILLIONS OF TONS	-----
(b) L.C.L. FREIGHT " " " " "	-----
3. EMPLOYMENT STEAM R'LYS IN THOUSANDS OF EMPLOYEES	-----
4. NET OPERATING REVENUE C.N.R'LYS IN MILLIONS OF DOLLARS	=====
5. C.N.R. INTEREST OBLIGATIONS	=====
6. REGISTRATION COMMERCIAL VEHICLES	-----



(b) At Page 242 of the proceedings before the Senate the Minister of Transport said:

"Unless the people of this country can reconcile themselves to paying in the neighbourhood of \$40,000,000 a year to make good the deficit for our national railways system I think some sort of order must be brought out of the present transportation system."

This was followed by Mr. E. P. Flintoft, K.C., General Counsel of the Canadian Pacific Railway, who said: pp. 259-260:

Mr. Flintoft: It has been estimated, sir, by the department of economics of the Canadian National Railways that, taking a year -- I think it was based on 1936; we will give you this in more detail when Mr. Allen comes to make his statement -- the loss to the railways from motor-truck competition, owing to the fact that, in the first place, the traffic taken from them was a direct loss, and, secondly, there was indirect loss through reductions in rates made in an endeavour to hold the traffic to the railways, amount to about \$38,000,000 a year. That is a very carefully worked-out estimate.

Right Hon. Mr. Meighen: Both the railways?

Mr. Flintoft: Yes, as I understand it, it is both the railways.

"Is that right, Mr. Allen?

Mr. Allen (Economist, Canadian National Railways): Yes...

The Chairman: Then the statement made as to percentages, if correct, might mean the difference between profit and loss to the railways.

Mr. Flintoft: Quite so. I wish we had that \$38,000,000.

The Chairman: The percentage is not so insignificant as it looks.

Mr. Flintoft: No. I will not say it is a net loss, because there would be some additional expense, but I think you can safely say there would be a net loss of over \$30,000,000.

Then at the bottom of Page 274 and at the top of Page 276 Mr.

Allen, Assistant Economist, Canadian National Railways stated:

Mr. Allen: It is suggested that the effect on the railways of competition from highway transport has been misunderstood. The total effect is made up of the sum of three items: first, the measure of traffic actually diverted to the motor vehicles; second, the total effect in dollars upon the rate structure of the railways as a result of their attempts to meet an economic competition by tariff adjustments; and, third, newly developed traffic, incapable of estimate, which the railways might have enjoyed if the motor vehicles were not a factor. The sum of the first two items has been estimated recently by the Bureau of Economics of the Canadian National Railways at some \$38,000,000 per year, which is over 16 percent of the total freight revenues of the Canadian railways for the year 1935. A large proportion of this total would represent loss in net revenue.

There was some question as to the amount of net involved in that \$38,000,000. If the traffic that we have lost to the highways moved at the average revenue per ton mile that we receive for all traffic, the loss in net would have been \$34,000,000 out of the \$38,000,000.

These figures leave an inaccurate impression, as appears from a speech made September 24, 1936 by Mr. S. W. Fairweather, Director of the Bureau of Economics of the Canadian National Railways at Charlottetown, P. E. I. Mr. Fairweather said that the gross freight rate loss was \$38,000,000 per annum; but that as the operating ratio was 85% the net operating loss was \$5,700,000.

That figure is not applicable to the Canadian National Railways, for their operating ratio in 1935 was 91.77%. It follows that if

agreed charges should enable the Canadian National Railways to recover \$19,000,000 gross revenue at rates and operating ratios formerly prevailing the net position of that railway might be improved by \$1,500,000.

But that is not the whole story; for Mr. Fairweather said that 80% was lost to private owners, and 20% to common carriers. Agreed Charges are not expected to recover anything substantial from private owners. So that on the railways' figures this legislation might be expected to improve the net operating position of the Canadian National Railways by \$300,000.

It is obvious that this result cannot be attained; and all financial reason for the legislation disappears.

But this is only half the story for at present rates the railways are carrying medium-haul l.c.l. freight at less than out-of-pocket cost. This appears from the attached graph headed 'l.c.l. - 200 lb. Shipment' (Exhibit C).

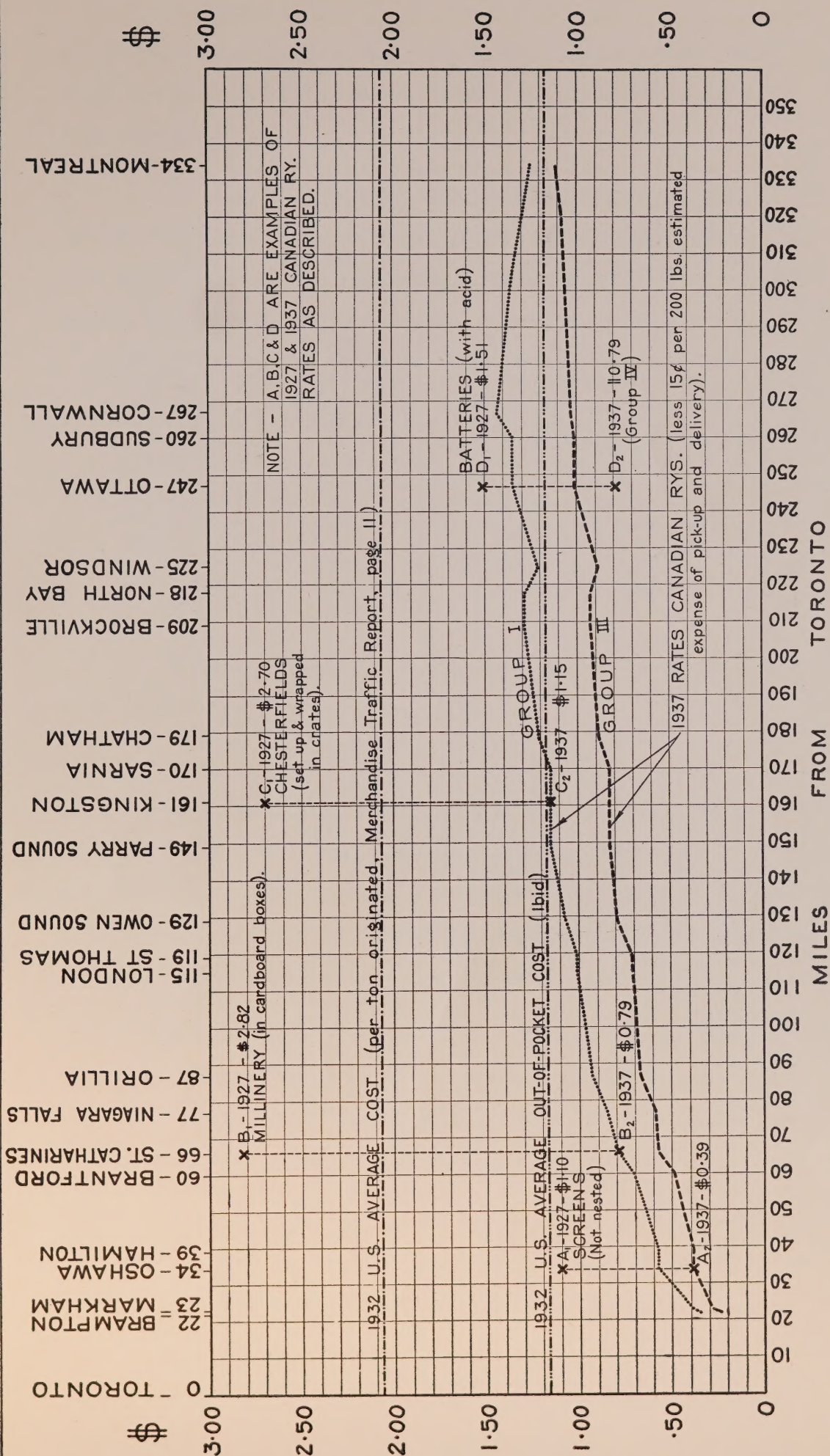
The graph shows in dollars per 200 lb. shipment the gross revenue received by the railways at the 1937 rates. The graph also gives four examples of 1927 rates. These were substantially higher than 1937 rates.

Under railway tariffs there are four groups for l.c.l. shipments, the most highly priced being Group I, the lowest, Group IV. The revenue received from all four groups averages what is yielded by Group III.

The line marked 'Group III' on the graph can therefore be taken as the governing line. It shows that for handling a 200 lb. shipment, (of, say, wire screens or screen doors) the railways would receive in revenue approximately 30¢ for a haul from Toronto to Brampton, 70¢ for Toronto to London, and \$1.10 for Toronto to Montreal.

This is stating the case heavily in favour of the railways for they are now giving pick-up and delivery services on l.c.l. shipments. The line marked 'Group III' represents tariff rates less 15¢ per shipment assumed expenses for pick-up and delivery. It is obvious that to pick up 200 lbs. of screens any where in Toronto and to deliver them anywhere in Ottawa will cost more than 7½¢ trucking at each end. The figure is closer to 40¢ than 15¢. Consequently, the line marked 'Group III' can be taken as the maximum conceivable gross revenue from a 200 lb. l.c.l. shipment in Ontario.

L.C.L. - 200 LB. SHIPMENT



The chart suggests that the revenue so received is approximately \$13.00 per ton less than the United States 1932 average cost and about \$3.50 less per ton than the United States average out-of-pocket cost for such shipments.

The United States figures are taken from the report of the Federal Coordinator of Transport made in 1934 after an exhaustive enquiry into the 1932 cost of rail l.c.l. traffic in the United States. The report says at Page 11:

"Rail L.C.L. traffic of the United States as a whole, in 1932 yielded an average revenue of \$16.60 per ton originated. The average cost of handling this traffic, including only operating expenses and taxes, was at least \$20.73, a ratio of 125 per cent. In the same year the revenue received from L.C.L. express traffic was \$47.58 per ton; while for handling that traffic, expenses and taxes of the express and rail companies aggregated \$53.62 per ton, a ratio of 113 per cent. Therefore, in 1932, rail merchandise traffics failed to bear their full proportion of total operating expenses and taxes by \$4.13 per rail L.C.L. ton and \$6.04 per express ton, or about \$80,000,000. In that year out-of-pocket cost of performing L.C.L. freight service was at least \$11.70 per ton, the out-of-pocket expense ratio, 70 per cent."

In 1932 railway wages had not risen and rail costs were at their lowest point.

No evidence was offered by the Railways before the Standing Committee of the House of Commons on Bill 31 to refute the allegation there made that railway l.c.l. traffic in the Province of Ontario was being carried at very considerably less than that traffic's share of the cost of doing business; and at several dollars a ton less than the out-of-pocket expenses directly attributable to that business.

It is submitted, that Part V of Bill 31 will result in a substantial increase in the deficit of Canadian National Railways insofar as it may be used to recover, at present prices or at lower prices, l.c.l. traffic now handled by the trucks.

Since 1927 Canadian National Railways have carried 13,000,000 tons of l.c.l. freight. An out-of-pocket loss of \$5.00 per ton would mean a deficit attributable to this traffic of \$65,000,000.

The Agreed Charges legislation will enable the railways to conceal the loss in l.c.l. traffic in a round tonnage figure which will defy analysis.

In the absence of a memorandum from the heads of the railways giving details of the financial improvement which is to be anticipated from the use of Agreed Charges, there is no reason for the enactment of the legislation at this time.

If the Bill is to pass it is submitted that it is essential that a clear duty be imposed on the carriers to prove to the Transport Board that the Agreed Charge will yield a sum sufficient to pay the traffic's fair proportion of the gross operating expenses, taxes and interest obligations of the carrier.

Agreements which do not yield the necessary amount will have two evil consequences:

- (a) They will tend to bankrupt the useful economy of the trucks, with consequent repercussions on employment and industry;
- (b) They will subsidize the business of the favoured shippers at the expense of the taxpayers.

4. Injury to Trade and Commerce

Trade and Commerce is the vital element in every national economy. To increase trade is to reduce unemployment.

As every transaction in trade involves the movement of the article purchased transportation is a vital element in trade.

It follows that anything which uneconomically disturbs an existing medium of transportation will have undesirable repercussions on trade, and on employment.

Part V is apparently designed to enable the railways, which are obsolescent in the medium-haul l.c.l. field, to disturb the more efficient economy of trucks, and to win traffic from them by offering inducements in other fields.

It is submitted that this offers no solution of the railway problem, and that it is against the national interest.

5. Injury to Labour

The evidence before the Chevrier Commission was to the effect that 1.3 persons are directly employed for each commercial truck operated. Exhibit B shows a registration of over 180,000 commercial vehicles in Canada. This figure includes all classes of operators, urban and rural, agricultural and otherwise.

How many persons are directly employed in commercial trucking, and how many will be adversely affected by Part V cannot be determined; nor is the figure material once it is apparent, as it is submitted is the case, that the number will be material.

The plight of the railway personnel (Ex. B.) is not due to the trucks. It will not be improved by putting the railway blight on a young and growing industry; nor by causing unemployment among its personnel.

6. Actionable Conspiracies and Combines

As the legislation stands without safeguards there is nothing to prevent it from being used destructively.

It is apparently aimed at the recovery of traffic which other media of transport can carry more economically than the railways; and which in some cases the rails can only carry at a loss. To use it so is to use it destructively.

On this basis the legislation appears to be an attempt to alter the existing law in three important respects:

(a) At common law it is an actionable wrong to conspire to injure others in the course of their trade. An arrangement to carry traffic at a loss with the object of taking it from other carriers can have no object other than the injury of the competing carrier.

(b) Section 498 of the Criminal Code, R.S.C. 1927, C. 36, is legislation designed to prevent agreements between shippers and carriers unduly to limit transportation facilities or to restrain or injure trade or commerce or unduly to prevent or lessen competition in transportation.

Insofar as the object of the legislation is destructive or permits destructive operations, it appears to be contrary to Section 498 of the Criminal Code.

(c) The Combines Investigation Act, R.S.C. 1927 C. 26 as amended 1935, C. 54, is directed against agreements having the effect of limiting transportation facilities or preventing or lessening competition in or substantially controlling transportation within any particular area or district or generally or otherwise restraining trade or commerce.

In so far as the legislation is destructive, or permits destructive operations, it appears to be contrary to the Combines Investigations Act.

GENERAL CONSIDERATIONS

An attempt has been made to further Part V by the following arguments, all of which, it is submitted, are irrelevant:

- (1) That the trucks do not pay their way on the highways of the Province.

If so, this is a matter for Provincial taxation. The fact is, as the evidence before the Chevrier Commission disclosed, that established trucking concerns in the Province of Ontario pay approximately 3% of their gross receipts in general taxes and 7% in special highway taxes, or a total of 10%.

On the other hand the 1936 combined tax accruals of the Canadian National Railways and Canadian Pacific Railway were \$8,319,000 or approximately 3% of their gross operating revenue. In Ontario some 5,000 commercial vehicle operators paid to the Province in 1936 over \$7,000,000 for road taxes alone.

- (2) The trucks are unregulated.

This, if true, is a matter for provincial legislation.

The situation is being progressively improved; but progress in this direction will be interrupted by 'unregulating' the railways.

- (3) Trucks engage in cut-throat competition.

If by this is meant that trucks operate at less than cost, this practice will not long continue; for, they have not behind them the support of the taxpayers of Canada.

- (4) Trucks can make "Agreed Charges".

This is misleading. Common carrier trucks are confined to limited routes averaging approximately 150 miles. It is obvious that they can not enter into agreements with shippers to handle the whole or any part of the business of a shipper, such as are contemplated by Part V.

AMENDMENTS TO PART V

If the principle of Part V be approved it is respectfully submitted that the legislation should be amended to prevent it from being used destructively.

If this is not done the legislation may be used to:

- (a) subsidize the business of favoured shippers at the expense of the general body of taxpayers;
- (b) use the money of all the taxpayers to destroy the business of chosen taxpayers or of one class of taxpayer;
- (c) increase the deficit on the Canadian National Railways.

It is also submitted that carriers whose business may be injured by the proposed Agreed Charge should have the elementary right of access to the tribunal administering this legislation.

The amendments suggested are contained in Exhibit D to this memorandum.

Respectfully submitted,

Lewis Duncan.

LEWIS DUNCAN.

73 Adelaide St. W.,
Toronto 2, Ont.,
June 4, 1938.

SUGGESTED

A M E N D M E N T S

TO

BILL 31

(SHOULD THE PRINCIPLE OF PART V BE APPROVED)

(References are to the Reprint of the Bill as amended and reported by the Standing Committee on Railways, Canals and Telegraph Lines)

Section 35 Subsection 1

Amend the subsection as follows:

- (a) Delete the words "notwithstanding anything in the Railway Act or in this Act"
- (b) Add to the subsection in the following:
 "And provided further that no such charge shall be approved until it has been proven to the satisfaction of the Board that the revenue to be had from the traffic covered by the agreement will yield a sum sufficient to pay said traffic's fair proportion of the gross operating expenses, taxes and interest obligations of the carrier."

The intention of the proposed amendment is:

- (a) to make applicable to agreed charges the long-standing provisions in the Railway Act which forbid rates which are unjust, unreasonable, discriminatory or preferential. (Section 325)
- (b) to require the carrier to prove to the Board that the business of the favoured shipper is not being subsidized at the expense of the taxpayers or of the bondholders.

Section 35 Subsection 2

Amend the subsection to make it read as follows:

- (2) Within seven days after the date of the agreement the carrier shall:
 - (a) lodge with the Board a duplicate original of the agreement, together with full particulars in the language of the published tariffs of the carrier, of the merchandise estimated to be carried under the agreement, with tonnages, mileages, points of origin and destination and tolls theretofore paid by the shipper for the carriage of the same whether by water, rail, highway or air; together with the assumed reductions or increase in rates for the different movements which may be deemed to result under the proposed agreement.
 - (b) lodge with the Board notice of application for the approval of the agreed charge.
 - (c) thirty days before the hearing of the said application give public notice of the said application by publication of the same and of the agreement once in the Canada Gazette and once in a daily newspaper published in the county in which the head office of the shipper is situate; and in such other manner as the Board may direct.

The effect of the proposed amendment is:

- (a) to require the carrier to furnish to the Board the underlying particulars of the transaction. Without these the Board is completely in the dark as to the basis of the bargain; nor can

the Board lay down principles of calculation which will be available to other shippers on application made under Section 35 (6). It is submitted that it is not in the public interest that the bargain be to all intents a secret one, except as to the final figure of so many dollars per ton averaged across Canada.

- (b) To make the terms of the agreement available to interested parties with the notice of application for approval. As the Bill stands no information is vouchsafed to the public as to the nature or terms of the agreement. Parties who read the notice and who think they may be interested must write to Ottawa or elsewhere with consequent delay, and without assurance that they will receive copies of the agreement.

Section 35 Subsection 4

Amend the subsection by striking out the words:

"or without restriction of time" and by substituting the words "not exceeding one year"

The effect of the amendment is to prevent the growth of a vested interest in agreed charges which might continue for an indefinite period regardless of change of money value or other considerations.

Section 35 Subsection 5(c)

Amend the subsection by striking out the words:

"any carrier" and by substituting the words: "any person engaged in the transport of goods."

As the Bill stands motor transport operators whose business may be injuriously affected by the agreed charge or by the proposed order of the Board are denied access to that tribunal.

Section 35 Subsection 7

Amend the subsection by striking out the words:

"Without restriction of time" and by substituting the words "not exceeding one year"

The effect of the amendment is similar to that of the amendment proposed to Subsection 4.

Section 35 Subsection 9

Amend the subsection by:

- (1) Striking out the words "without restriction of time" in line 43
- (2) Striking out the words "any carrier" in (c) and substituting "any person engaged in the transport of goods".
- (3) Striking out the words "after the expiration of one year from the date of the approval".

The effect of the proposed amendment is to give the Board power to withdraw its approval on cause shown at any time. As the legislation stands the Board is deprived for one year of jurisdiction to rescind its order no matter what hardship or injustice it may be causing.

Section 35 Subsection 13

Amend subsection 13 to read as follows:

11. On any application under this Act the Board shall have regard to all considerations which appear to it to be relevant and in particular to the following:
- (a) It is hereby declared to be the policy of Parliament to develop and preserve systems of transport by water, rail, highway and air properly adapted to the needs of trade and commerce of Canada and of the national defence; to foster sound economic conditions in and to develop co-ordination between such systems of transport without unjust discriminations, undue preferences or advantages or unfair or destructive competitive practices.
 - (b) The rates at which the different items of traffic covered by the proposed agreement are calculated in arriving at the agreed charge; and their relation to the then existing standard, special or competitive tariffs of the carriers for the same items of traffic.
 - (c) The effect which the making of the agreed charge or the fixing of a charge is likely to have or has had in improving the net profits of the carrier available for dividends after charging the traffic included in the agreement with its proper share of operating expenses, taxes, interest and other obligations of the carrier.

The effect of the amendment is three-fold:

- (1) To make it possible for the Board to consider matters other than the narrow one of the quantum of the charge; to take a national view of the matters under consideration; and to develop as well as the constitution permits the complementary rather than the competitive aspects of the four media of transportation. The amendment introduces the principle embodied in Section 202 of the Motor Carriers Act, 1935, as administered by the Interstate Commerce Commission which reads:

"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and co-ordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the Commerce of the United States and of the national defence; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part."

- (2) To require the Board to consider all relevant particulars and intermediate steps which lead up to and are implicit in the final figure of the agreed charge, with the view of rationalizing "Agreed Charges", and keeping them within due bounds.
- (3) To ensure that shippers who are favoured with agreed charges are not given transportation at uneconomic figures, or at prices which cast the burden of railway operating costs, taxes and interest on other classes of traffic or on the taxpayers.

Section 35 Subsection 14

Add subsection 14 reading as follows:

- (14) (a) Whenever the Board approves or refuses to approve an agreed charge or when the Board fixes a charge under Subsection 7 hereof or when the Board makes any other order under the provisions of this Part, the Board, at the time the order is made, shall deliver written reasons for its order.

- (b) The reasons shall indicate what matters have been considered and how given effect to in the order made.
- (c) Separate written reasons shall be given at the time the order is made by such members as do not concur in the reasons given by the Board.

The effect of the amendment is to assimilate the practice of the Board to the practice of the Courts; to enable shippers or others who may consider their business to be adversely affected by a proposed "Agreed Charge" to obtain advice on the principles followed by the Board; and to make it possible for Parliament to follow the operation of the legislation.

Section 36

Amend Subsection (1) of Section 36 to read as follows:

Upon complaint to the Governor-in-Council by any incorporated municipality or by any shipper or by any person engaged in the transport of goods by water, rail, highway or air that any existing charge is not in the national interest or that it places the business of such person or any business represented by such person at an undue or unfair disadvantage or is otherwise undesirable, the Governor-in-Council may refer such complaint to the Board for investigation; whereupon the Board may suspend such agreed charge pending hearing; and if the Board finds that the effect of the agreed charge is not in the national interest or that it puts the complainant or those represented by the complainant at an undue or unfair disadvantage, or that any portion of the traffic covered by the agreed charge is being carried at a loss after charging that traffic with its proper proportion of operating expenses, taxes, interest and other obligations of the carrier, or that the effect of the agreed charge is otherwise undesirable the Board may make an order varying or cancelling the agreed charge complained of; or may make such other order as in the circumstances it deems proper.

The effect of the amendment is to confer on the Governor-in-Council power to hear complaints as to the injurious effect of an agreed charge and to refer the same to the Board for consideration. It is considered that the application should be made to the Governor-in-Council rather than to the Minister; for the agreed charge may adversely affect interests within the purview of other Ministers and Departments, e.g., National Defence, Trade and Commerce, National Revenue, Finance, Agriculture, etc.

